IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 7685 OF 2005
IN
CRIMINAL APPEAL NO. 1084 OF 2005

Sham @ Bittya Shrirang Mohite ..Applicant
(Ori.Accused No.5)

versus

State of Maharashtra ..Respondents

Mr. Rahul S. Thakur for the Applicant - Accused.

Mrs. V. R. Bhosale, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.

DATE : 28TH MARCH, 2006

ORAL ORDER :

1. Heard.

2. This is an application for bail by applicant - original accused No.5 with reference to his role in the so-called alleged crime for which he is convicted under Section 364 r/w 34, 302 r/w. 34, 201 r/w. 34 of IPC, and, sentenced to imprisonment for 10 years.

3. The main case was that two persons husband and wife were burnt out of an enmity over a petrol pump by all the accused and therefore accused Nos.

1 and 4 and other accused were held guilty for offences under different sections. The applicant - accused No.5, in particular, is held guilty for offences as stated above, but he is acquitted of the offence under Section 120-B. Counsel for the accused pointed out from the judgment and the evidence that the only circumstance against this accused is that he was seen in the jeep where both the victims were carried. Names of the victims are Mr. & Mrs. Kamble. The dispute between him and the accused No. 1 was over the ownership rights of Amit Gas Agency. Those two persons were strangulated and they were burnt along with their jeep. Earlier their son Amit had lodged a missing report with Goregaon Police Station vide Exhibit 90 but later on FIR was lodged on 31.3.2001 showing suspicion against Satish Shinde who was allegedly acting at the instance of accused Nos. 1 and 3. The only evidence i.e. collected against this accused is Mangalsutra of Alka Kamble was discovered at his instance and a nylon rope.

4. Even according to the learned APP this is the only piece of evidence but according to her it is most important piece of evidence showing direct connection of the accused with murder.

5. So far as recovery of mangalsutra is concerned, it was admittedly a broken mangalsutra,

therefore its identification becomes suspicious, at least, at this stage, for bail. Recovery of nylon rope and the report of the CA that nylon rope revealed application of force, cannot be said to be a circumstance disentitling the applicant - accused for bail. Regarding T.I. parade wherein this accused was also required to be identified, the trial court has noted number of discrepancies or defects. Out of the three witnesses P.W. 1 Amit Kamble, P.W. 3 Shekhar Gokhale and P.W. 33 Keshav Hate, P.W. 1 Amit and P.W. 33 Keshav could identify only accused No.4. Memorandum of parade has no verification at the foot, it did not disclose the age of the accused person and the age of the dummies used for the identification parade. Though the T.I. parade is running into 12 pages only one common panchnama is made. Tahsildar did not sign below all the 12 tables.

6. Nylon rope that was recovered was from the open space "**Gavche Pude Vatmathyajawal asleliya darga jawal jangal bhagat lapvoon thevleliya aahet tia me kadon deto"** i.e. the rope is hidden in the jungle near dargah, which is inner top of hillock ghatmatha, and, it was recovered from the bushes and stones. Therefore, considering this evidence, we are satisfied that the applicant deserves to be released on bail. Therefore, order:

ORDER

. Application is allowed.

. Applicant accused be released on bail on P.R. bond of Rs.10,000/- with one solvent surety in the like amount. He will attend the concerned police station once in a fortnight for six months and thereafter once in two months till the appeal is disposed of.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)